MICHAEL HARTLEIB
P.O. Box 7078
Laguna Niguel, CA 92607

FILED VIA ECFS
December 8, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation; Consolidated Application for Authority to Transfer Control of XM Radio Inc. and Sirius Satellite Radio Inc.
MB Docket No. 07-57

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, and the Commission's Public Notice dated March 29, 2007 (DA 07-1435), this letter notifies the Commission that at 11:30 am PST on December 6, 2007, Michael Hartleib, on his behalf and on behalf of satellite radio consumers, had a conference call with Ann Bushmiller of the Office of General Counsel.

Petitioner expressed his concerns that, over the past two months, numerous phone calls made to members of the Media Bureau, including but not limited to Rosemary Harold, have gone unanswered. Despite repeated attempts and a formal Complaint filed with the Inspector General's Office, Petitioner has had no follow up with his Complaint and concerns as to the handling of the Petition for Declaratory Ruling.

It is the Petitioner's opinion that the FCC is failing to protect the public's interest by not providing the venue for public comments on his Petition for Declaratory Ruling. Petitioner also informed Ms. Bushmiller that, over the pasts two months he and others have worked hard to lobby members of Congress including Congressman Edward Markey, Congressman Dingle and other members of the Energy and Commerce Committee as well as the Telecommunications Sub-Committee.

Petitioner explained he has been in contact with attorneys on the Oversight Committee and had a meeting scheduled with several members of said Committee in the week ahead. It remains unclear as to why the Commission has not addressed the Petition for Declaratory Ruling as to the lack of enforcement and compliance of the Interoperable Mandate. It is irresponsible, if not a violation of their duties and mandate to protect the public interest, for the FCC to consider transferring one of these two licenses to one licensee when it is unclear whether or not the companies are in full compliance with their licensing requirements. Petitioner again demanded that the FCC determine whether or not these companies are in compliance with their licensing requirements at this time and prior to consideration of the pending merger. Petitioner advised Ms. Bushmiller of his

attempt to intervene in a shareholder suit which has class status (*Greg Brockwell et al v Sirius Satellite Radio et al*). Shareholders were denied their right to a fully informed vote.

Petitioner also pointed out that these companies continue their play on words by carefully crafting statements that are factually correct but terribly misleading to members of the Commission, consumers and their shareholders.

Examples: A) Sirius claims that shareholders overwhelmingly approved the merger between Sirius and XM.[1] <u>This is not correct.</u> It is said that 96% of shares voted were in favor of the merger. This is a factually correct statement, although very misleading. The truth is that slightly over 50% of shareholders actually cast a ballot in favor of the merger. Therefore, 96% of approximately 50.1% of shareholders voted in favor of said merger. A NON-VOTE was counted as a vote "NO"; naturally the majority of shares voted would be in favor of the merger, as shareholders who opposed the merger had little or no reason to vote.

B) *"Receiver models sold since January 2001 have limitations that preclude them from becoming interoperable."* [2] This is also a factually correct statement although confusing to those that read it. There are indeed limitations that preclude these receivers from becoming interoperable as they would need a firmware update to enable the tuner portion to tune in the additional 1% of additional spectrum needed to cover XM's band width. These limitations are designed and engineered limitations put in place intentionally.

C) *"When Sirius deployed products based on third-generation chipsets, the company included the capability to update software in the chipset through Sirius' transmitted satellite signal. While this capability allows Sirius to modify certain elements in the chipset performance, it cannot modify the functions identified*

---

[1] **"SIRIUS STOCKHOLDERS APPROVE MERGER WITH XM** The preliminary tabulation indicates that more than 96 percent of the shares voted were cast in favor of the transaction."

[2] "RESPONSE TO THE INFORMATION AND DOCUMENT REQUEST ISSUED ON NOVEMBER 2, 2007 BY THE FEDERAL COMMUNICATIONS COMMISSION. NOVEMBER 16, 2007"

above. However, as the Commission is aware, Sirius and XM, through a joint venture, have developed interoperable receivers and produced them in noncommercial quantities. See infra Response to Specification III.E."[3] Note: third generation chipsets have the ability to be programmed via a firmware update as the Petitioner has alleged in his Petition for Declaratory Ruling. Also, as the Commission is aware of the companies producing interoperable radios in non-commercial quantities, it would be nice if the Commission would inform consumers and the Petitioner of this information; this should have been done prior to the shareholder vote. Petitioner alleges that the production of interoperable radios in non-commercial quantities does not mean a small or limited number. These radios have been produced in large quantities but have not been certified for commercial introduction to consumers. They are there, but consumers are unaware.

Respectfully,

Michael Hartleib

[3] "RESPONSE TO THE INFORMATION AND DOCUMENT REQUEST ISSUED ON NOVEMBER 2, 2007 BY THE FEDERAL COMMUNICATIONS COMMISSION. NOVEMBER 16, 2007"